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08/314,547 09/28/94 DOUBEK

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EXAMINER

ASHER, K

F3M1/1002

ART UNIT	PAPER NUMBER
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3307

DATE MAILED: 10/02/95

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 9/28/94 ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- ☒ Notice of References Cited by Examiner, PTO-892.
- ☐ Notice of Draftsman's Patent Drawing Review, PTO-948.
- ☐ Notice of Art Cited by Applicant, PTO-1449.
- ☐ Notice of Informal Patent Application, PTO-152.
- ☐ Information on How to Effect Drawing Changes, PTO-1474.
- ☐

Part II SUMMARY OF ACTION

1. ☒ Claims 1-18 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. ☐ Claims _____ have been cancelled.

3. ☒ Claims 10, 11 are allowed.

4. ☒ Claims 1-6, 8, 13, & 16-18 are rejected.

5. ☒ Claims 7, 9, 11, 12, 14, & 15 are objected to.

6. ☐ Claims _____ are subject to restriction or election requirement.

7. ☒ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. ☐ Formal drawings are required in response to this Office action.

9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).

11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).

12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.

13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. ☐ Other

EXAMINER'S ACTION

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Claims 1-6, 8, 13, and 16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of copending application Serial No. 08/183,916. Although the conflicting claims are not identical, they are not patentably distinct from each other because the same elements are being described with different terms.

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Applicant's arguments directed to the extent of the resilient members is not persuasive. Both cases claim that the resilient members extend to the edges of the base/truss. See claim 35 of '916, and the fact that the claims recite that it is these members that provide the restoring forces via their connection to the end edges of the base/truss member. The resilient members extending to the end edges is inherently set forth due to these recitations.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

25

Claims 1-6, 8, 13, and 16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 11 and 12 of copending application Serial No. 08/316,636. Although the conflicting claims are not identical, they are not patentably distinct from each other because these claims of the instant application are broader than the claims of '636 and would extend the exclusive grant of claims 11 and 12 of the '636 application.

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This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

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Claims 17 and 18 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claim 17 is missing text in line 16, before "that". Claim 18 depends upon itself.

10 *The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:*

15 *(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.*

20 *(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.*

25 *Claims 1-6, 8, 13, and 16 are rejected under 35 U.S.C. § 102(a and e) as being clearly anticipated by WO 92/22340.*

30 *With regard to claims 8 and 13, note the radius corners of element 20 of WO 92/22340.*

35 *Claims 7, 9, 11, 12, 14, and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.*

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Claim 17 would be allowable if rewritten or amended to overcome the rejection under 35 U.S.C. § 112.

5 *Claim 18 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112 and to include all of the limitations of the base claim and any intervening claims.*

10 *Applicant's arguments with respect to the claims have been considered but are deemed to be moot in view of the new grounds of rejection.*

15 The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this
20 application. See 37 C.F.R. § 1.78(d).

25 *Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Examiner K. L. Asher at telephone number (703) 308-0858.*


Any inquiry of a general nature should be directed to the Group receptionist at (703) 308-0858.

30 *Status inquiries are to be handled according to MPEP section 203.*

Inquiries as to Terminal Disclaimer and PCT requirements should be directed to the Group Paralegal, Mr. Andre Robinson, at (703) 308-2104.

35 *The facsimile phone number for Art Unit 3307 is (703) 308 - 2864.*
PLEASE CALL THE EXAMINER PRIOR TO SENDING ANY FAX. *This will ensure that the Examiner receives the fax promptly.*

40 *September 28, 1995*


KIMBERLY L. ASHER
PRIMARY EXAMINER
GROUP 3300